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11 Attorneys for Defendant
GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,

16 Plaintiffs,

17 v.

18 GOOGLE, INC.,

19 Defendant.
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Case No. 3:10-cv-03561 WHA (DMR)

**DECLARATION OF EDWARD A.
BAYLEY IN SUPPORT OF GOOGLE'S
MOTION FOR LEAVE TO FILE A
MOTION FOR RECONSIDERATION OF
THE COURT'S ORDER DENYING
SEALING OF GOOGLE-APPLE
INFORMATION**

Dept. Courtroom 4, 3rd Floor (Oakland)
Judge: Hon. Donna M. Ryu

1 I, EDWARD A. BAYLEY, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate at the law firm of Keker & Van Nest LLP, counsel to Google Inc. ("Google") in the
4 above-captioned action. I submit this declaration in support of Google's Motion for Leave to File
5 a Motion for Reconsideration of the Court's Order Denying Sealing of Google-Apple
6 Information. I have knowledge of the facts set forth herein, and if called upon as a witness, I
7 could testify to them competently under oath.

8 2. During the January 14, 2016 discovery hearing, Oracle's counsel disclosed
9 confidential financial terms of an agreement between Google and non-party Apple Inc. January
10 14, 2016 Tr. at 29:24-25. This information was derived from deposition testimony that Google
11 has designated as "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" under the
12 Protective Order that governs this case. Dkt. No. 66. Oracle did not provide any advance notice
13 to Google that it intended to disclose this highly confidential information at the hearing.

14 3. Google considers this information to be extremely confidential and has always
15 treated it as such. Public disclosure of the Apple-related financial information could severely and
16 adversely impact Google's ability to negotiate, *inter alia*, similar terms with other third parties in
17 connection with similar agreements now or in the future. At the time the Court issued its prior
18 order denying Google's oral motion to seal [Dkt. No. 1434], Google had not yet filed a written
19 motion to seal the highly confidential information related to the Apple-Google agreement.

20 4. Apple also considers this information to be extremely confidential. I understand
21 that Apple has submitted a declaration from Leslie Fithian, Senior Director of the Software
22 Products Legal Team at Apple. Dkt. No. 1439 ("Fithian Decl."). As explained in the Fithian
23 Declaration, Apple considers this information confidential and commercially sensitive, and
24 disclosing this information to the public would pose a serious risk of competitive harm to Apple.
25 *Id.* at ¶¶ 4-6. At the time the Court issued its prior order denying Google's oral motion to seal
26 [Dkt. No. 1434], Apple had not yet submitted the Fithian Declaration.

27 5. On January 19, 2016 at 11:49 a.m., counsel for Google sent a letter to counsel for
28 Oracle by email asking Oracle to join Google's formal request to the Court to seal the above-

1 described portions of the January 14, 2016 hearing transcript. Google's counsel reached out to
2 Oracle's counsel again on January 20, 2016. Oracle has not responded to Google's
3 correspondence.

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5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct to the best of my knowledge.

7 Executed on this 21st day of January, 2016 at San Francisco, California.

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9
10 By: 

11 Edward A. Bayley
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